

§ 1602.56

Subpart R—Investigation of Reporting or Recordkeeping Violations

§ 1602.56 Investigation of reporting or recordkeeping violations.

When it has received an allegation, or has reason to believe, that a person has not complied with the reporting or recordkeeping requirements of this part or of part 1607 of this chapter, the Commission may conduct an investigation of the alleged failure to comply.

[56 FR 35756, July 26, 1991]

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 304 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

Sec.

1603.100 Purpose.

Subpart A—Administrative Process

- 1603.101 Coverage.
- 1603.102 Filing a complaint.
- 1603.103 Referral of complaints.
- 1603.104 Service of the complaint.
- 1603.105 Withdrawal of a complaint.
- 1603.106 Computation of time.
- 1603.107 Dismissals of complaints.
- 1603.108 Settlement and alternative dispute resolution.
- 1603.109 Investigations.

Subpart B—Hearings

- 1603.201 Referral and scheduling for hearing.
- 1603.202 Administrative law judge.
- 1603.203 Unavailability or withdrawal of administrative law judges.
- 1603.204 Ex parte communications.
- 1603.205 Separation of functions.
- 1603.206 Consolidation and severance of hearings.
- 1603.207 Intervention.
- 1603.208 Motions.
- 1603.209 Filing and service.
- 1603.210 Discovery.
- 1603.211 Subpoenas.
- 1603.212 Witness fees.
- 1603.213 Interlocutory review.
- 1603.214 Evidence.
- 1603.215 Record of hearings.
- 1603.216 Summary decision.
- 1603.217 Decision of the administrative law judge.

29 CFR Ch. XIV (7–1–08 Edition)

Subpart C—Appeals

- 1603.301 Appeal to the Commission.
- 1603.302 Filing an appeal.
- 1603.303 Briefs on appeal.
- 1603.304 Commission decision.
- 1603.305 Modification or withdrawal of Commission decision.
- 1603.306 Judicial review.

AUTHORITY: 42 U.S.C. 2000e–16c.

SOURCE: 62 FR 17543, Apr. 10, 1997, unless otherwise noted.

§ 1603.100 Purpose.

This part contains the regulations of the Equal Employment Opportunity Commission (hereinafter the Commission) for processing complaints of discrimination filed under section 304 of the Government Employee Rights Act, 42 U.S.C. 2000e–16c.

[62 FR 17543, Apr. 10, 1997, as amended at 72 FR 5616, Feb. 7, 2007]

Subpart A—Administrative Process

§ 1603.101 Coverage.

Section 304 of the Government Employee Rights Act of 1991 applies to employment, which includes application for employment, of any individual chosen or appointed by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof:

(a) To be a member of the elected official's personal staff;

(b) To serve the elected official on the policymaking level; or

(c) To serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

[62 FR 17543, Apr. 10, 1997, as amended at 72 FR 5616, Feb. 7, 2007]

§ 1603.102 Filing a complaint.

(a) *Who may make a complaint.* Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability or retaliated against for opposing any practice made unlawful by federal laws protecting equal employment opportunity or for participating in any stage of administrative or judicial proceedings under federal laws protecting equal employment opportunity may

file a complaint not later than 180 days after the occurrence of the alleged discrimination.

(b) *Where to file a complaint.* A complaint may be filed in person, by mail or by facsimile machine to any Commission office or with any designated agent or representative of the Commission. The addresses of the Commission's District, Field, Area and Local offices appear in 29 CFR 1610.4.

(c) *Contents of a complaint.* A complaint shall be in writing, signed and verified. In addition, each complaint should contain the following:

(1) The full name, address and telephone number of the person making the complaint;

(2) The full name and address of the person, governmental entity or political subdivision against whom the complaint is made (hereinafter referred to as the respondent);

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices (See 29 CFR 1601.15(b)); and

(4) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local FEP agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(d) *Amendment of a complaint.* Notwithstanding paragraph (c) of this section, a complaint is sufficient when the Commission receives from the person making the complaint a written statement sufficiently precise to identify the parties and to describe generally the alleged discriminatory action or practices. A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint, or to clarify and amplify its allegations. Such amendments, and amendments alleging additional acts that constitute discriminatory employment practices related to or growing out of the subject matter of the original complaint, will relate back to the date the complaint was first received. A complaint that has been amended after it was referred shall not be again referred to the appropriate state or

local fair employment practices agency.

(e) *Misfiled complaint.* A charge filed pursuant to 29 CFR part 1601 or part 1626, that is later deemed to be a matter under this part, shall be processed as a complaint under this part and shall relate back to the date of the initial charge or complaint. A complaint filed under this part that is later deemed to be a matter under 29 CFR part 1601 or part 1626 shall be processed as a charge under the appropriate regulation and shall relate back to the date of the initial complaint.

[62 FR 17543, Apr. 10, 1997, as amended at 71 FR 26829, May 9, 2006]

§ 1603.103 Referral of complaints.

(a) The Commission will notify an FEP agency, as defined in 29 CFR 1601.3(a), when a complaint is filed by a state or local government employee or applicant under this part concerning an employment practice within the jurisdiction of the FEP agency. The FEP agency will be entitled to process the complaint exclusively for a period of not less than 60 days if the FEP agency makes a written request to the Commission within 10 days of receiving notice that the complaint has been filed, unless the complaint names the FEP agency as the respondent.

(b) The Commission may enter into an agreement with an FEP agency that authorizes the FEP agency to receive complaints under this part on behalf of the Commission, or waives the FEP agency's right to exclusive processing of complaints.

§ 1603.104 Service of the complaint.

Upon receipt of a complaint, the Commission shall promptly serve the respondent with a copy of the complaint.

§ 1603.105 Withdrawal of a complaint.

The complainant may withdraw a complaint at any time by so advising the Commission in writing.

§ 1603.106 Computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

§ 1603.107

(b) A document shall be deemed timely if it is delivered by facsimile not exceeding 20 pages, in person or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.

(c) All time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included unless it falls on a Saturday, Sunday or federal holiday, in which case the period shall be extended to include the next business day.

§ 1603.107 Dismissals of complaints.

(a) Where a complaint on its face, or after further inquiry, is determined to be not timely filed or otherwise fails to state a claim under this part, the Commission shall dismiss the complaint.

(b) Where the complainant cannot be located, the Commission may dismiss the complaint provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 30 days to a notice sent by the Commission to the complainant's last known address.

(c) Where the complainant fails to provide requested information, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate, the Commission, after providing the complainant with notice and 30 days in which to respond, may dismiss the complaint.

(d) Written notice of dismissal pursuant to paragraphs (a), (b), or (c) of this section shall be issued to the complainant and the respondent. The Commission hereby delegates authority to the Program Director, Office of Field Programs, or to his or her designees, and District Directors, or to their designees, to dismiss complaints.

(e) A complainant who is dissatisfied with a dismissal issued pursuant to paragraphs (a), (b), or (c) of this section may appeal to the Commission in ac-

29 CFR Ch. XIV (7-1-08 Edition)

cordance with the procedures in subpart C of this part.

[62 FR 17543, Apr. 10, 1997, as amended at 64 FR 28744, May 27, 1999]

§ 1603.108 Settlement and alternative dispute resolution.

(a) The parties are at all times free to settle all or part of a complaint on terms that are mutually agreeable. Any settlement reached shall be in writing and signed by both parties and shall identify the allegations resolved. A copy of any settlement shall be served on the Commission.

(b) With the agreement of the parties, the Commission may refer a complaint to a neutral mediator or to any other alternative dispute resolution process authorized by the Administrative Dispute Resolution Act, 5 U.S.C. 571 to 583, or other statute.

(c) The Commission may use the services of the Federal Mediation and Conciliation Service, other federal agencies, appropriate professional organizations, employees of the Commission and other appropriate sources in selecting neutrals for alternative dispute resolution processes.

(d) The alternative dispute resolution process shall be strictly confidential, and no party to a complaint or neutral shall disclose any dispute resolution communication or any information provided in confidence to the neutral except as provided in 5 U.S.C. 584.

§ 1603.109 Investigations.

(a) Before referring a complaint to an administrative law judge under section 201 of this part, the Commission may conduct investigation using an exchange of letters, interrogatories, fact-finding conferences, interviews, on-site visits or other fact-finding methods that address the matters at issue.

(b) During an investigation of a complaint under this part, the Commission shall have the authority to sign and issue a subpoena requiring the attendance and testimony of witnesses, the production of evidence and access to evidence for the purposes of examination and the right to copy. The subpoena procedures contained in 29 CFR 1601.16 shall apply to subpoenas issued pursuant to this section.

Subpart B—Hearings**§ 1603.201 Referral and scheduling for hearing.**

(a) Upon request by the complainant under paragraph (b) of this section or if the complaint is not dismissed or resolved under subpart A of this part, on behalf of the Commission, the Office of Federal Operations shall transmit the complaint file to an administrative law judge, appointed under 5 U.S.C. 3105, for a hearing.

(b) If the complaint has not been referred to an administrative law judge within 180 days after filing, the complainant may request that the complaint be immediately transmitted to an administrative law judge for a hearing.

(c) The administrative law judge shall fix the time, place, and date for the hearing with due regard for the convenience of the parties, their representatives or witnesses and shall notify the parties of the same.

§ 1603.202 Administrative law judge.

The administrative law judge shall have all the powers necessary to conduct fair, expeditious, and impartial hearings as provided in 5 U.S.C. 556(c). In addition, the administrative law judge shall have the power to:

(a) Change the time, place or date of the hearing;

(b) Enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge and presenting arguments as to why the party or the party's representative could not appear either prior to the hearing or within two days after the scheduled hearing; and

(c) Take any appropriate action authorized by the Federal Rules of Civil Procedure (28 U.S.C. appendix).

§ 1603.203 Unavailability or withdrawal of administrative law judges.

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hear-

ing or issuing a decision on the record as made, or both.

(b) The administrative law judge may withdraw from the adjudication at any time the administrative law judge deems himself or herself disqualified. Prior to issuance of the decision, any party may move that the administrative law judge withdraw on the ground of personal bias or other disqualification, by filing with the administrative law judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal.

(c) The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion is timely and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

§ 1603.204 Ex parte communications.

(a) Oral or written communications concerning the merits of an adjudication between the administrative law judge or decision-making personnel of the Commission and an interested party to the adjudication without providing the other party a chance to participate are prohibited from the time the matter is assigned to an administrative law judge until the Commission has rendered a final decision. Communications concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission and other purely procedural questions are permitted.

(b) Decision-making personnel of the Commission include members of the Commission and their staffs and personnel in the Office of Federal Operations, but do not include investigators and intake staff.

(c) Any communication made in violation of this section shall be made part of the record and an opportunity for rebuttal by the other party allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(d) Where it appears that a party has engaged in prohibited ex parte communications, that party may be required

§ 1603.205

to show cause why, in the interest of justice, his or her claim or defense should not be dismissed, denied or otherwise adversely affected.

§ 1603.205 Separation of functions.

(a) The administrative law judge may not be responsible to or subject to the supervision or direction of a Commission employee engaged in investigating complaints under this part.

(b) No Commission employee engaged in investigating complaints under this part shall participate or advise in the decision of the administrative law judge, except as a witness or counsel in the adjudication, or its appellate review.

§ 1603.206 Consolidation and severance of hearings.

(a) The administrative law judge may, upon motion by a party or upon his or her own motion, after providing reasonable notice and opportunity to object to all parties affected, consolidate any or all matters at issue in two or more adjudications docketed under this part where common parties, or factual or legal questions exist; where such consolidation would expedite or simplify consideration of the issues; or where the interests of justice would be served. For purposes of this section, no distinction is made between joinder and consolidation of adjudications.

(b) The administrative law judge may, upon motion of a party or upon his or her own motion, for good cause shown, order any adjudication severed with respect to some or all parties, claims or issues.

§ 1603.207 Intervention.

(a) Any person or entity that wishes to intervene in any proceeding under this subpart shall file a motion to intervene in accordance with § 1603.208.

(b) A motion to intervene shall indicate the question of law or fact common to the movant's claim or defense and the complaint at issue and state all other facts or reasons the movant should be permitted to intervene.

(c) Any party may file a response to a motion to intervene within 15 days after the filing of the motion to intervene.

29 CFR Ch. XIV (7-1-08 Edition)

§ 1603.208 Motions.

(a) All motions shall state the specific relief requested. All motions shall be in writing, except that a motion may be made orally during a conference or during the hearing. After providing an opportunity for response, the administrative law judge may rule on an oral motion immediately or may require that it be submitted in writing.

(b) Unless otherwise directed by the administrative law judge, any other party may file a response in support of or in opposition to any written motion within ten (10) business days after service of the motion. If no response is filed within the response period, the party failing to respond shall be deemed to have waived any objection to the granting of the motion. The moving party shall have no right to reply to a response, unless the administrative law judge, in his or her discretion, orders that a reply be filed.

(c) Except for procedural matters, the administrative law judge may not grant a written motion prior to the expiration of the time for filing responses. The administrative law judge may deny a written motion without awaiting a response. The administrative law judge may allow oral argument (including that made by telephone) on written motions. Any party adversely affected by the *ex parte* grant of a motion for a procedural order may request, within five (5) business days of service of the order, that the administrative law judge reconsider, vacate or modify the order.

(d) The administrative law judge may summarily deny dilatory, repetitive or frivolous motions. Unless otherwise ordered by the administrative law judge, the filing of a motion does not stay the proceeding.

(e) All motions and responses must comply with the filing and service requirements of § 1603.209.

§ 1603.209 Filing and service.

(a) Unless otherwise ordered by the administrative law judge, a signed original of each motion, brief or other document shall be filed with the administrative law judge, with a certificate of service indicating that a copy has been sent to all other parties, and the date and manner of service. All

documents shall be on standard size (8½ × 11) paper. Each document filed shall be clear and legible.

(b) Filing and service shall be made by first class mail or other more expeditious means of delivery, including, at the discretion of the administrative law judge, by facsimile. The administrative law judge, may in his discretion, limit the number of pages that may be filed or served by facsimile. Service shall be made on a party's representative, or, if not represented, on the party.

(c) Every document shall contain a caption, the complaint number or docket number assigned to the matter, a designation of the type of filing (e.g., motion, brief, etc.), and the filing person's signature, address, telephone number and telecopier number, if any.

§ 1603.210 Discovery.

(a) Unless otherwise ordered by the administrative law judge, discovery may begin as soon as the complaint has been transmitted to the administrative law judge pursuant to §1603.201. Discovery shall be completed as expeditiously as possible within such time as the administrative law judge directs.

(b) Unless otherwise ordered by the administrative law judge, parties may obtain discovery by written interrogatories (not to exceed 20 interrogatories including subparts), depositions upon oral examination or written questions, requests for production of documents or things for inspection or other purposes, requests for admission or any other method found reasonable and appropriate by the administrative law judge.

(c) Except as otherwise specified, the Federal Rules of Civil Procedure shall govern discovery in proceedings under this part.

(d) Neutral mediators who have participated in the alternative dispute resolution process in accordance with §1603.108 shall not be called as witnesses or be subject to discovery in any adjudication under this part.

§ 1603.211 Subpoenas.

(a) Upon written application of any party, the administrative law judge may on behalf of the Commission issue a subpoena requiring the attendance

and testimony of witnesses and the production of any evidence, including, but not limited to, books, records, correspondence, or documents, in their possession or under their control. The subpoena shall state the name and address of the party at whose request the subpoena was issued, identify the person and evidence subpoenaed, and the date and time the subpoena is returnable.

(b) Any person served with a subpoena who intends not to comply shall, within 5 days after service of the subpoena, petition the administrative law judge in writing to revoke or modify the subpoena. All petitions to revoke or modify shall be served upon the party at whose request the subpoena was issued. The requestor may file with the administrative law judge a response to the petition to revoke or modify within 5 days after service of the petition.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the administrative law judge may refer the matter to the Commission for enforcement in accordance with 29 CFR 1601.16(c).

§ 1603.212 Witness fees.

Witnesses summoned under this part shall receive the same fees and mileage as witnesses in the courts of the United States. Those fees must be paid or offered to the witness by the party requesting the subpoena at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to pay or offer witness fees and mileage allowances in advance.

§ 1603.213 Interlocutory review.

(a) Interlocutory review may not be sought except when the administrative law judge determines upon motion of a party or upon his or her own motion that:

(1) The ruling involves a controlling question of law or policy about which there is substantial ground for difference of opinion;

(2) An immediate ruling will materially advance the completion of the proceeding; or

§ 1603.214

(3) The denial of an immediate ruling will cause irreparable harm to the party or the public.

(b) Application for interlocutory review shall be filed within ten (10) days after notice of the administrative law judge's ruling. Any application for review shall:

(1) Designate the ruling or part thereof from which appeal is being taken; and

(2) Contain arguments or evidence that tend to establish one or more of the grounds for interlocutory review contained in paragraph (a) of this section.

(c) Any party opposing the application for interlocutory review shall file a response to the application within 10 days after service of the application. The applicant shall have no right to reply to a response unless the administrative law judge, within his or her discretion, orders that a reply be filed.

(d) The administrative law judge shall promptly certify in writing any ruling that qualifies for interlocutory review under paragraph (a) of this section.

(e) The filing of an application for interlocutory review and the grant of an application shall not stay proceedings before the administrative law judge unless the administrative law judge or the Commission so orders. The Commission shall not consider a motion for a stay unless the motion was first made to the administrative law judge.

§ 1603.214 Evidence.

The administrative law judge shall accept relevant non-privileged evidence in accordance with the Federal Rules of Evidence (28 U.S.C. appendix), except the rules on hearsay will not be strictly applied.

§ 1603.215 Record of hearings.

(a) All hearings shall be mechanically or stenographically reported. All evidence relied upon by the administrative law judge for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification, with a copy provided for all parties, if not previously provided, and incorporated into the record. Transcripts

29 CFR Ch. XIV (7-1-08 Edition)

may be obtained by the parties and the public from the official reporter at rates fixed by the contract with the reporter.

(b) Corrections to the official transcript will be permitted upon motion, only when errors of substance are involved and upon approval of the administrative law judge. Motions for correction must be submitted within ten (10) days of the receipt of the transcript unless additional time is permitted by the administrative law judge.

§ 1603.216 Summary decision.

Upon motion of a party or after notice to the parties, the administrative law judge may issue a summary decision without a hearing if the administrative law judge finds that there is no genuine issue of material fact or that the complaint may be dismissed pursuant to §1603.107 or any other grounds authorized by this part. A summary decision shall otherwise conform to the requirements of §1603.217.

§ 1603.217 Decision of the administrative law judge.

(a) The administrative law judge shall issue a decision on the merits of the complaint within 270 days after referral of a complaint for hearing, unless the administrative law judge makes a written determination that good cause exists for extending the time for issuing a decision. The decision shall contain findings of fact and conclusions of law, shall order appropriate relief where discrimination is found, and shall provide notice of appeal rights consistent with subpart C of this part.

(b) The administrative law judge shall serve the decision promptly on all parties to the proceeding and their counsel. Thereafter, the administrative law judge shall transmit the case file to the Office of Federal Operations including the decision and the record. The record shall include the complaint; the investigative file, if any; referral notice; motions; briefs; rulings; orders; official transcript of the hearing; all discovery and any other documents submitted by the parties.

Subpart C—Appeals

§ 1603.301 Appeal to the Commission.

Any party may appeal to the Commission the dismissal of a complaint under §1603.107, any matter certified for interlocutory review under §1613.213, or the administrative law judge's decision under §1603.216 or §1603.217.

§ 1603.302 Filing an appeal.

(a) An appeal shall be filed within 30 days after the date of the appealable decision or certification for interlocutory review, unless the Commission, upon a showing of good cause, extends the time for filing an appeal for a period not to exceed an additional 30 days.

(b) An appeal shall be filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036, by mail or personal delivery or facsimile.

§ 1603.303 Briefs on appeal.

(a) The appellant shall file a brief or other written statement within 30 days after the appeal is filed, unless the Commission otherwise directs.

(b) All other parties may file briefs or other written statements within 30 days of service of the appellant's brief or statement.

(c) Every brief or statement shall contain a statement of facts and a section setting forth the party's legal arguments. Any brief or statement in support of the appeal shall contain arguments or evidence that tend to establish that the dismissal, order or decision:

(1) Is not supported by substantial evidence;

(2) Contains an erroneous interpretation of law, regulation or material fact, or misapplication of established policy;

(3) Contains a prejudicial error of procedure; or

(4) Involves a substantial question of law or policy.

(d) Appellate briefs shall not exceed 50 pages in length.

(e) Filing and service of the appeal and appellate briefs shall be made in accordance with §1603.209.

§ 1603.304 Commission decision.

(a) On behalf of the Commission, the Office of Federal Operations shall review the record and the appellate briefs submitted by all the parties. The Office of Federal Operations shall prepare a recommended decision for consideration by the Commission.

(b) When an administrative law judge certifies a matter for interlocutory review under §1603.213, the Commission may, in its discretion, issue a decision on the matter or send the matter back to the administrative law judge without decision.

(c) The Commission will not accept or consider new evidence on appeal unless the Commission, in its discretion, reopens the record on appeal.

(d) The decision of the Commission on appeal shall be its final order and shall be served on all parties.

(e) In the absence of a timely appeal under §1603.302, the decision of the administrative law judge under §1603.217 or a dismissal under §1603.107 shall become the final order of the Commission. A final order under this paragraph shall not have precedential significance.

§ 1603.305 Modification or withdrawal of Commission decision.

At any time, the Commission may modify or withdraw a decision for any reason provided that no petition for review in a United States Court of Appeals has been filed.

§ 1603.306 Judicial review.

Any party to a complaint who is aggrieved by a final decision under §1603.304 may obtain a review of such final decision under chapter 158 of title 28 of the United States Code by filing a petition for review with a United States Court of Appeals within 60 days after issuance of the final decision. Such petition for review should be filed in the judicial circuit in which the petitioner resides, or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.